

E-FILED 1/22/2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES *ex rel.* DONNA M.
McLEAN and THE STATE OF CALIFORNIA
ex rel DONNA M. McLEAN,

No. C05-01962 HRL

Plaintiffs,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART RELATOR'S
MOTION FOR SANCTIONS RE
INTERROGATORIES AND DOCUMENT
REQUESTS**

THE COUNTY OF SANTA CLARA, THE
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES OF SANTA CLARA
COUNTY, KENNETH BORELLI,
LAWRENCE GALLEGOS, EPIFANIO ("J.R.")
REYNA, TANYA BEYERS, DR. DEE
SCHAFFER, DR. TOMMIJEAN THOMAS,
DR. RICHARD PERILLO and DOES 1-100,

[Re: Docket No. 180]

Defendants.

Relator Donna McLean moves for evidentiary sanctions re several interrogatories and document requests served on defendant County of Santa Clara ("County"). She also seeks an order directing the County to pay her reasonable attorney's fees and costs incurred in bringing the instant motion. The County opposes the motion. Upon consideration of the moving and responding papers, as well as the arguments of counsel, this court grants the motion in part and denies it in part.

The instant discovery dispute concerns certain requests which were served by McLean's third and current counsel (William Dresser) after McLean's second attorney (Michael Millen)

1 moved to withdraw but before the court issued its order permitting Millen's withdrawal. At that
2 time, the County took the position that, under Fed. R. Civ. P. 26(g), it was not obliged to
3 respond to the discovery requests at all. McLean subsequently filed a motion to compel. This
4 court granted that motion in part. Although McLean failed to show why she could not have
5 served the requests sooner, the court concluded that, in the interests of justice, the County
6 should respond to them (save for a few which were deemed to be duplicative and unreasonably
7 broad). McLean now contends that the County has violated that order by allegedly failing to
8 properly answer interrogatories and produce responsive documents. However, this court's prior
9 order concerned whether the County should be compelled to respond to the requests at all. The
10 issue now presented by the instant motion is whether the County's discovery responses to
11 Interrogatory Nos. 14-19 and Document Request Nos. 25-32 are deficient – and if so, whether
12 terminating sanctions are warranted or whether the County should be made to provide further
13 responses.

14 With respect to Interrogatory No. 14 and Document Request No. 29, the motion is
15 denied. At the motion hearing, McLean agreed that, in view of the voluntary dismissal of her
16 claims on behalf of the State of California, the information sought by these requests is no longer
17 relevant. To the extent that any other interrogatory or document request reasonably may be
18 construed as seeking information about funding received from the state, the motion is also
19 denied as to them for the same reason.

20 The motion is granted in part as to Document Request No. 31. The court agrees that the
21 request, as drafted, is vague, ambiguous and overbroad. However, at the motion hearing, relator
22 clarified that she does not seek juvenile court records. Instead, she said that she seeks
23 information pertaining to one particular fiscal form – not identified to the court, but which she
24 offered to show to defendants. The motion as to this request is granted; however, the request
25 will be limited to (a) documents evidencing fiscal adjustments, (b) the particular form McLean
26 offered to share with defendants and (c) to the time period from 2001 to the present. Also, the
27 court assumes the documents are maintained together on discrete "files" or one electronically
28 stored and readily retrievable. It does not require defendant to search through individual


1 “client” files. Non-privileged, responsive documents that have not already been produced (if
2 any) shall be produced no later than **February 4, 2009**.

3 As for the remaining discovery requests in dispute – Interrogatory Nos. 15-19 and
4 Document Request Nos. 25-28, 30 and 32, the motion is denied. On the record presented, this
5 court finds that no sanctions are warranted. Additionally, McLean has not convincingly or
6 clearly explained why she is entitled to the requested discovery or how proportionality and
7 other requirements of Fed.R.Civ.P. 26 have been satisfied.

8 McLean’s request for payment of her attorney’s fees and costs is denied.

9 SO ORDERED.

10 Dated: January 22, 2009

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13 HOWARD R. LLOYD
14 UNITED STATES MAGISTRATE JUDGE
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5:05-cv-1962 Notice has been electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.

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